IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.868/2006

Judgment delivered on: November 26 ,2007

National Insurance Co.Ltd. ..... Appellant.
Through: Ms. Manjusha Wadhwa, Advocate.

versus

Sh.Sandeep Kumar & Ors. ..... Respondents
Through: Mr. Chandrani Prasad, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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Respondent No.3 has been served through publication. Nobody is present on his behalf. He is proceeded ex parte.

By way of this appeal, the appellant has assailed findings of the Tribunal on the ground that the driver of the offending vehicle was admittedly holding license for LMV but was

driving Medium Goods Vehicle. Counsel for the appellant has tried to draw a distinction between LMV and Medium Goods Vehicle. Counsel for the appellant has placed reliance on the written submissions of the appellant submitted before the Tribunal. There is a difference between the two vehicles as would be evident from the definition given under Section 2(21) and 2(23) of Motor Vehicles Act, 1988, counsel for the appellant argued.

Counsel for the respondent, on the other hand, contends that it was incumbent upon the appellant/insurance company to plead and prove on record that driver of the vehicle in question was untrained to drive that particular vehicle which was involved in the accident. Counsel for the respondent also contends that this is an admitted position between the parties that driver of the offending vehicle was holding an LMV license and not the license for goods vehicle and such a technical plea cannot completely absolve him from his liability. Counsel for the appellant contends that claimant is a poor man and he has unnecessarily been put to sufferings due to deprivation of payment of the award-amount.

I have heard learned counsel for the parties and have

perused the record. Counsel for the appellant has placed reliance on two judgments of the Hon'ble Supreme Court reported in ***2005 SCC (Crl.) 148 Oriental Insurance Co. Ltd. Vs. Nanjappan and others*** and ***(2006) 4 SCC 250 National Insurance Co. Ltd. Vs. Kusum Rai and others***. A bare perusal of both the decisions of the Hon'ble Supreme Court shows that the Apex Court has given directions to the insurance company to first pay the compensation amount and then recover the same from the owner of the offending vehicle. The contention of the counsel for the appellant is that the same view may be taken in the present case and the directions given in **Nanjappan's case** may be followed. For better appreciation of the matter, counsel for the appellant has referred to para 8 of the said judgment. The relevant portion of the said judgment is reproduced as under :-

> *"8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur Case that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondent claimants within three months*

from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the executing court concerned as if the dispute between the insurer and the owner was the subject-matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the claimants, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the executing court shall take assistance of the Regional Transport Authority concerned. The executing court shall pass appropriate order in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be opened to the executing court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed

of in the aforesaid terms, with no order as to costs."

A perusal of the aforesaid para of the judgment would clearly reveal that the court has given directions to the Tribunal to straightway initiate execution proceedings against the owner of the offending vehicle instead of wasting time in filing a regular civil suit for recovery of the amount, but in **Kusum Rai's case**, the Apex Court has given recovery rights to the insurance company by exercising its jurisdiction under Article 136 of the Constitution of India, while holding an opinion that the appellant in the given circumstances of the case, was not liable to pay compensation amount on the ground of the driver being not holding a valid license.

In these circumstances, considering facts of the said two decisions and the facts of the present case, there is no difficulty in holding that the appellant can ultimately claim the compensation amount paid by the insurance company, from the owner of the offending vehicle. Even otherwise, the owner has not chosen to appear in the present appeal although duly served through publication. As regards contention of counsel for the

appellant that the amounts so deposited by the appellant, be not directed to be released in favour of the claimant/respondent without following the complete process as laid down in para 8 of **Nanjappan's judgment (supra)**, I find that such course would be too harsh for the claimant. Para 8 of the said judgment begins with the direction to the insurer to pay the amount to the claimants within a period of three months but in the later portion, directions have been given so as to put the owner of the offending vehicle to certain terms of furnishing security, etc. Once the recovery rights are being given to the appellant insurance company and the Motor Vehicles Act being a beneficial legislation for protecting rights of the victims of the accidents, the course being suggested for putting on hold the payment till the owner appears in the case and furnishes security would amount to depriving the claimant from the fruits of the award and such a course will further unnecessarily prolong the mental agony of the claimants. The intent of the Apex Court is quite clear, i.e., immediate payment to the claimant and then its recovery by the insurer. The insurer being a public company, can afford to wait the recovery but the same course cannot be made applicable so far the claimants are concerned.

Going by the directions of the Apex Court, the appellant/insurance company is given rights to recover the amount by filing an execution petition against owner of the offending vehicle. Let the amount which is lying deposited with the Tribunal, be released forthwith in favour of the claimant.

With the above directions, the present appeal is disposed of.

KAILASH GAMBHIR, J.

November 26, 2007
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